

## Senate Bill No. 1502

### CHAPTER 996

An act to amend, repeal, and add Section 1001.65 of the Penal Code, and to amend Sections 19705, 19706, 19717, and 19721 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 27, 1996. Filed  
with Secretary of State September 27, 1996.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1502, Kopp. Income and bank and corporation tax laws: bad checks.

(1) Existing law establishes a bad check diversion program that may be created within the office of the district attorney in a county that adopts the program. Existing law authorizes the district attorney to collect a fee of up to \$25, in addition to the actual amount of any bank charges incurred by the victim, if his or her office collects and processes a bad check. Under existing law, if a bad check case is not referred to a diversion program, the court is authorized to impose a fee for the collection and processing of a bad check by the district attorney of not more than \$25 in addition to the actual amount of any bank charges incurred by the victim, not to exceed \$1,000.

This bill would increase the maximum \$25 fee to \$35, and would provide that the latter provision applies when a criminal complaint is filed in a bad check case after conviction if the maker of the check fails to comply with the terms of the bad check diversion program. The bill would require the Judicial Council to prepare and submit a report on the effect of this provision, as specified. These provisions would be operative until January 1, 1999, at which time existing law would be restored.

(2) The law governing the administration of personal income taxes and bank and corporation taxes specifies certain violations that constitute a felony and provide for the punishment of these violations, including payment of the costs of prosecution.

This bill would add to that punishment payment of the costs of investigation and increase the amounts of fines that can be imposed, as provided.

(3) Existing law also specifies the punishment for a willful failure to file any return or supply information, or to file false or fraudulent returns by any person or any officer or employee of a bank or corporation.

This bill would add to that punishment the payment of the costs of investigation and prosecution.

(4) Existing law provides that, in any civil proceeding in connection with the determination, collection, or refund of any tax, interest, or penalty under the personal income tax law, a judgment for reasonable litigation costs shall not be awarded unless the court determines that the prevailing party has exhausted the administrative remedies available to that party.

This bill would include, as an administrative remedy, the filing of an appeal with the Board of Equalization, as specified.

(5) Existing law makes it a misdemeanor for any person, with intent to defraud, to willfully procure or counsel any individual to procure a state-issued income tax refund warrant through the filing of a return knowing that the recipient is not entitled to the refund. Upon conviction of this offense a person is punishable by a fine not to exceed \$20,000, or by imprisonment not to exceed one year, or by both that fine and imprisonment.

This bill would instead provide that any person convicted of this offense is punishable by imprisonment in a county jail not to exceed one year or in the state prison, or by a fine not to exceed \$50,000, or by both that fine and imprisonment.

(6) By changing the penalty of the crime described in (5) above from a misdemeanor to either a misdemeanor or a felony, this bill would create a state-mandated local program.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1001.65 of the Penal Code is amended to read:

1001.65. (a) A district attorney may collect a fee if his or her office collects and processes a bad check. The amount of the fee shall not exceed thirty-five (\$35) for each bad check in addition to the actual amount of any bank charges incurred by the victim as a result of the offense.

(b) Notwithstanding subdivision (a), when a criminal complaint is filed in a bad check case after the maker of the check fails to comply with the terms of the bad check diversion program, the court, after conviction, may impose a bad check collection fee for the collection and processing efforts by the district attorney of not more than thirty-five (\$35) for each bad check in addition to the actual amount of any bank charges incurred by the victim as a result of the offense, not to exceed one thousand dollars (\$1,000) in the aggregate. The court also may, as a condition of probation, require a defendant to

participate in and successfully complete a check writing education class. If so required, the court shall make inquiry into the financial condition of the defendant and, upon a finding that the defendant is able in whole or part to pay the expense of the education class, the court may order him or her to pay for all or part of that expense.

(c) If the district attorney elects to collect any fee for bank charges incurred by the victim pursuant to this section, that fee shall be paid to the victim for any bank fees that the victim may have been assessed. In no event shall reimbursement of a bank charge to the victim pursuant to subdivision (a) or (b) exceed ten dollars (\$10) per check.

(d) On or before January 1, 1998, the Judicial Council shall prepare a report on the effect of the amendments to this section enacted at the 1995-96 Regular Session of the Legislature, and submit that report to the Senate and Assembly Judiciary Committees.

(e) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 1999, deletes or extends that date.

SEC. 1.4. Section 1001.65 is added to the Penal Code, to read:

1001.65. (a) A district attorney may collect a fee if his or her office collects and processes a bad check. The amount of the fee shall not exceed twenty-five dollars (\$25) for each bad check in addition to the actual amount of any bank charges incurred by the victim as a result of the offense.

(b) Notwithstanding subdivision (a), if a bad check case is not referred to a diversion program pursuant to this chapter, the court may impose a bad check collection fee for the collection and processing of a bad check by the district attorney of not more than twenty-five dollars (\$25) for each bad check in addition to the actual amount of any bank charges incurred by the victim as a result of the offense, not to exceed one thousand dollars (\$1,000) in the aggregate. The court also may, as a condition of probation, require a defendant to participate in and successfully complete a check writing education class. If so required, the court shall make inquiry into the financial condition of the defendant and, upon a finding that the defendant is able in whole or part to pay the expense of the education class, the court may order him or her to pay for all or part of that expense.

(c) If the district attorney elects to collect any fee for bank charges incurred by the victim pursuant to this section, that fee shall be paid to the victim for any bank fees that the victim may have been assessed. In no event shall reimbursement of a bank charge to the victim pursuant to subdivision (a) or (b) exceed ten dollars (\$10) per check.

(d) This section shall become operative on January 1, 1999.

SEC. 1.5. Section 19705 of the Revenue and Taxation Code is amended to read:

19705. (a) Any person who does any of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned not more than three years, or both, together with the costs of investigation and prosecution:

(1) Willfully makes and subscribes any return, statement, or other document, that contains or is verified by a written declaration that it is made under penalty of perjury, and he or she does not believe to be true and correct as to every material matter.

(2) Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the Personal Income Tax Law or the Bank and Corporation Tax Law, of a return, affidavit, claim, or other document, that is fraudulent or is false as to any material matter, whether or not that falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, affidavit, claim, or document.

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the Personal Income Tax Law or the Bank and Corporation Tax Law, or by any regulation pursuant to that law, or procures the same to be falsely or fraudulently executed or advises, aids in, or connives at that execution.

(4) Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by Chapter 5 (commencing with Section 19201); or Chapter 8 (commencing with Section 688.010) of Division 1 of, and Chapter 5 (commencing with Section 706.010) of Division 2 of, Title 9 of the Code of Civil Procedure, with intent to evade or defeat the assessment or collection of any tax, additions to tax, penalty, or interest imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(5) In connection with any settlement under Section 19442, or offer of that settlement, or in connection with any closing agreement under Section 19441 or offer to enter into that agreement, willfully does any of the following:

(A) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(B) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(b) In the case of a bank or corporation, the fifty thousand dollars (\$50,000) limitation specified in subdivision (a) shall be increased to two hundred thousand dollars (\$200,000).

(c) The fact that an individual's name is signed to a return, statement, or other document filed, including a return, statement, or other document filed using electronic technology pursuant to Section 18621.5, shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him or her.

(d) For purposes of this section "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or which owns or controls the taxpayer, directly or indirectly.

SEC. 2. Section 19706 of the Revenue and Taxation Code is amended to read:

19706. Any person or any officer or employee of any bank or corporation who, within the time required by or under the provisions of this part, willfully fails to file any return or to supply any information with intent to evade any tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), or who, willfully and with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement or supplies any false or fraudulent information, is punishable by imprisonment in the county jail not to exceed one year, or in the state prison, or by fine of not more than twenty thousand dollars (\$20,000), or by both the fine and imprisonment, at the discretion of the court, together with the costs of investigation and prosecution.

SEC. 3. Section 19717 of the Revenue and Taxation Code is amended to read:

19717. (a) In the case of any civil proceeding which is—

(1) Brought by or against the State of California in connection with the determination, collection, or refund of any tax, interest, or penalty under this part, and

(2) Brought in a court of record of this state, the prevailing party may be awarded a judgment for reasonable litigation costs incurred in that proceeding.

(b) (1) A judgment for reasonable litigation costs shall not be awarded under subdivision (a) unless the court determines that the prevailing party has exhausted all administrative remedies available to that party under this part, including the filing of an appeal as provided in Section 19324.

(2) An award under subdivision (a) shall be made only for reasonable litigation costs which are allocable to the State of California and not to any other party to the action or proceeding.

(3) (A) No award for reasonable litigation costs may be made under subdivision (a) with respect to any declaratory judgment proceeding.

(B) Subparagraph (A) shall not apply to any proceeding which involves the revocation of a determination that the organization is described in Section 23701d.

(4) No award for reasonable litigation costs may be made under subdivision (a) with respect to any portion of the civil proceeding during which the prevailing party has unreasonably protracted that proceeding.

(c) For purposes of this section:

(1) “Reasonable litigation costs” includes any of the following:

(A) Reasonable court costs.

(B) Based upon prevailing market rates for the kind or quality of services furnished any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party’s case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(2) (A) “Prevailing party” means any party to any proceeding described in subdivision (a) (other than the State of California or any creditor of the taxpayer involved) that:

(i) Establishes that the position of the State of California in the civil proceeding was not substantially justified, and

(ii) (I) Has substantially prevailed with respect to the amount in controversy, or

(II) Has substantially prevailed with respect to the most significant issue or set of issues presented.

(B) Any determination under subparagraph (A) as to whether a party is a prevailing party shall be made—

(i) By the court, or

(ii) By agreement of the parties.

(3) The term “civil proceeding” includes a civil action.

(d) For purposes of this section, in the case of—

(1) Multiple actions which could have been joined or consolidated, or

(2) A case or cases involving a return or returns of the same taxpayer (including joint returns of married individuals) which could have been joined in a single proceeding in the same court, the actions or cases shall be treated as one civil proceeding regardless of whether the joinder or consolidation actually occurs, unless the court in which

the action is brought determines, in its discretion, that it would be inappropriate to treat the actions or cases as joined or consolidated for purposes of this section.

(e) An order granting or denying an award for reasonable litigation costs under subdivision (a), in whole or in part, shall be incorporated as a part of the decision or judgment in the case and shall be subject to appeal in the same manner as the decision or judgment.

(f) For purposes of this section, “position of the State of California” includes either of the following:

(1) The position taken by the State of California in the civil proceeding.

(2) Any administrative action or inaction by the Franchise Tax Board (and all subsequent administrative action or inaction) upon which that proceeding is based.

SEC. 4. Section 19721 of the Revenue and Taxation Code is amended to read:

19721. (a) Any person who, with intent to defraud, does any of the following is liable for a penalty of not more than ten thousand dollars (\$10,000):

(1) Willfully utters, passes, negotiates, or procures a state-issued income tax refund warrant generated through the filing of a return knowing that the recipient is not entitled to the refund.

(2) Willfully aids, abets, advises, encourages, or counsels any individual to utter, pass, negotiate, or procure a state-issued income tax refund warrant generated through the filing of a return knowing the recipient is not entitled to the refund.

(b) The person is also punishable by imprisonment in a county jail not to exceed one year, or in the state prison, or by a fine not to exceed fifty thousand dollars (\$50,000), or by both that fine and imprisonment, at the discretion of the court, together with the costs of investigation and prosecution.

(c) The fact that an individual’s name is endorsed to a state-issued refund warrant shall be prima facie evidence for all purposes that the refund warrant was actually signed by him or her.

(d) The penalty shall be recovered in the name of the people in any court of competent jurisdiction. Counsel for the Franchise Tax Board may, upon request of the district attorney or other prosecuting attorney, assist the prosecuting attorney in presenting the law or facts to recover the penalty at the trial or a criminal proceeding for violation of this section.

(e) Any individual guilty under this part shall be subject to Section 502.01 of the Penal Code.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction,

eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

